

AMENDED IN ASSEMBLY MAY 10, 2000  
AMENDED IN SENATE JANUARY 18, 2000  
AMENDED IN SENATE APRIL 27, 1999  
AMENDED IN SENATE APRIL 15, 1999  
AMENDED IN SENATE MARCH 25, 1999  
AMENDED IN SENATE FEBRUARY 25, 1999

## SENATE BILL

No. 126

### Introduced by Senator Polanco

December 22, 1998

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~~An act to amend Section 1170 of, and to add Section 2808.3 to, the Penal Code, relating to corrections.—An act to add Section 208.7 to the Welfare and Institutions Code, relating to juvenile offenders.~~

#### LEGISLATIVE COUNSEL'S DIGEST

SB 126, as amended, Polanco. ~~Corrections: inmate rehabilitation: Prison Industry Authority—State Incarcerated Youth Ombudsperson.~~

*Existing law directs the Board of Corrections to conduct biennial inspections of each jail, juvenile hall, lockup, or special purpose juvenile hall that was used to confine a minor during the preceding calendar year.*

*This bill would create the Office of the State Incarcerated Youth Ombudsperson to provide assistance to persons who are at least 10 years of age, but not more than 21 years of age, who are within the jurisdiction of the juvenile court on the*

*basis of criminal conduct, and who are detained in or confined to juvenile homes and camps, facilities operated by the Department of the Youth Authority, or private facilities licensed to house more than 12 minors, in resolving issues related to their placement, care, or services.*

*The bill would provide that the Governor shall appoint the ombudsperson to a 4-year term. The bill would direct the ombudsperson to investigate incidents involving persons who are eligible to receive assistance from the ombudsperson. Among other things, the bill would require the ombudsperson to compile and make available to the Legislature specified data collected relating to these duties. The bill would authorize the ombudsperson to examine records and documents of any juvenile home or camp, a facility operated by the Department of the Youth Authority, or any private facility licensed to house more than 12 minors, that is used for the detention or incarceration of persons who are eligible to receive assistance from the ombudsperson. The ombudsperson would also have access to any record of a state or local agency that is necessary to carry out his or her duties.*

*The bill would provide that a court shall issue an order requiring compliance with a request of the ombudsperson, as specified, to any person who willfully obstructs or hinders the ombudsperson in the proper and lawful exercise of his or her duties, or who willfully misleads or attempts to mislead the ombudsperson in his or her inquiries or investigation.*

*The bill would also provide that the ombudsperson and his or her staff would have the same immunity from civil and criminal liability as a judge.*

*The Department of Corrections or a county probation department would be required to respond to the ombudsperson regarding action taken on recommendations of the ombudsperson or the reasons for not taking that action, thus establishing a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do*



*not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~(1) Existing law states the findings and declarations of the Legislature that (a) the purpose of imprisonment for crime is punishment, (b) this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances, and (c) the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. Existing law provides that these findings and declarations shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders, and further provides that the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.~~

~~This bill instead would provide that these findings and declarations shall not be construed to preclude vocational and drug treatment programs that are designed to rehabilitate nonviolent, first-time felony offenders and to reduce the rate of recidivism. The bill further would state that the intent of the Legislature is to encourage the development of policies and programs consistent with the intent to reduce the rate of recidivism.~~

~~(2) Existing law establishes the Prison Industry Authority under the direction of the Prison Industry Board and specifies the powers and duties of the board, its membership, and their compensation. The authority has jurisdiction over the operation of all industrial, agricultural, and service operations. Existing law also creates the Prison Industries Revolving Fund that is used to meet the expenses of the prison industries program, as specified. The board is also authorized to borrow~~

~~money from the state and private sources to finance the program. The authority determines which work programs are to be established and the products to be made.~~

~~This bill would require the Department of Finance, in consultation with the Prison Industry Authority and the Legislative Analyst's Office, to develop a display in the annual Governor's Budget, consistent with its accounting and budgeting system, of expenditures and revenues for the Prison Industry Authority.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 1170 of the Penal Code is~~  
 2 *SECTION 1. Section 208.7 is added to the Welfare and*  
 3 *Institutions Code, to read:*  
 4 *208.7. (a) (1) There is hereby created the Office of*  
 5 *the State Incarcerated Youth Ombudsperson.*  
 6 *(2) The Governor shall appoint the State Incarcerated*  
 7 *Youth Ombudsperson. The appointment shall be for a*  
 8 *term of four years. The Governor shall make his or her*  
 9 *decision in consultation with a committee comprised of*  
 10 *at least seven but not more than 10 persons, including at*  
 11 *least one representative each of county probation*  
 12 *officers, the Department of the Youth Authority, the*  
 13 *Board of Corrections, juvenile court judges, and youth*  
 14 *advocacy organizations. The Director of the Youth*  
 15 *Authority shall select the committee members, the*  
 16 *majority of whom shall be representatives of youth*  
 17 *advocacy organizations.*  
 18 *(3) The position of State Incarcerated Youth*  
 19 *Ombudsperson shall be a full-time position and the*  
 20 *person appointed to that position shall not be employed*  
 21 *in any other capacity. The ombudsperson shall be a*  
 22 *person of recognized judgment, objectivity, and integrity*  
 23 *who is qualified by training and experience to analyze*  
 24 *problems of law enforcement, corrections*  
 25 *administration, and public policy. The ombudsperson*  
 26 *shall not do any of the following:*

1 (A) *Be actively involved in political party activities.*

2 (B) *Be a candidate for or hold other public office,*  
3 *whether elective or appointive.*

4 (C) *Be engaged in any other full-time occupation,*  
5 *business, or profession.*

6 (b) *The Office of the State Incarcerated Youth*  
7 *Ombudsperson shall provide assistance to persons who*  
8 *are at least 10 years of age but not more than 21 years of*  
9 *age, who are within the jurisdiction of the juvenile court*  
10 *pursuant to Section 602, and who are detained in or*  
11 *committed to a juvenile home or camp, a facility operated*  
12 *by the Department of the Youth Authority, or a private*  
13 *facility licensed to house more than 12 minors. The Office*  
14 *of the State Incarcerated Youth Ombudsperson shall do*  
15 *all of the following:*

16 (1) *Disseminate information regarding the rights of*  
17 *persons to whom the ombudsperson is authorized to*  
18 *provide assistance pursuant to this section and regarding*  
19 *the types of assistance available. The information shall*  
20 *include a notice that conversations with the office may*  
21 *not be confidential.*

22 (2) *Investigate and attempt to resolve complaints*  
23 *related to care, placement, or services made by or on*  
24 *behalf of persons eligible to receive assistance from the*  
25 *ombudsperson. The office shall investigate, upon*  
26 *complaint or upon his or her own initiative, any incident*  
27 *involving a person eligible to receive assistance from the*  
28 *ombudsperson that occurred in a juvenile home or camp,*  
29 *in a facility operated by the Department of the Youth*  
30 *Authority, or in a private facility licensed to house more*  
31 *than 12 minors if the incident comes within any of the*  
32 *following descriptions:*

33 (A) *Is contrary or inconsistent with law or*  
34 *Department of Corrections practice.*

35 (B) *Is inadequately explained when reasons should*  
36 *have been revealed.*

37 (C) *Is inefficiently performed.*

38 (D) *Is unreasonable, unfair, or otherwise*  
39 *objectionable, even though in accordance with law.*

1 (3) Determine whether to investigate a complaint or  
2 refer complaints to another agency for investigation. The  
3 ombudsperson may decide not to investigate a complaint  
4 or incident under either of the following conditions:

5 (A) The complaint is trivial, frivolous, vexatious, or  
6 was not made in good faith.

7 (B) The complaint has been too long delayed to justify  
8 present examination. If the office decides to investigate  
9 a complaint, then it shall (A) notify the complainant of  
10 the intention to investigate, (B) update the complainant  
11 on the progress of the investigation, and (C) notify the  
12 complainant of the final outcome. If the office declines to  
13 investigate a complaint or continue an investigation, the  
14 office shall notify the complainant of the reasons for  
15 declining to investigate.

16 (4) Document the number, source, location, and  
17 nature of the complaints submitted to the office.

18 (5) Compile and make available to the Legislature all  
19 data collected over the course of the year, including, but  
20 not limited to, the number of calls to the toll-free  
21 telephone number, the number of complaints made, the  
22 number of investigations performed by the office, the  
23 number of referrals made, and the number of unresolved  
24 complaints.

25 (6) Collaborate with local ombudspersons.

26 (c) The ombudsperson shall hire the necessary  
27 personnel to perform the functions of the office. He or she  
28 shall have the power to do all of the following:

29 (1) Investigate, upon complaint or upon his or her own  
30 initiative, any incident involving a person who is eligible  
31 to receive services provided by the ombudsperson that  
32 occurred in a juvenile home or camp, at a facility  
33 operated by the Department of the Youth Authority, or  
34 in a private facility licensed to house more than 12 minors  
35 that is used for the detention or confinement of any  
36 person who is eligible to receive assistance from the  
37 ombudsperson.

38 (2) Adopt rules necessary for the discharge of the  
39 duties of the office, including procedures for receiving

1 and processing complaints, conducting investigations,  
2 and reporting findings.

3 (3) Examine records and documents of any juvenile  
4 home or camp, a facility operated by the Department of  
5 the Youth Authority, or any private facility licensed to  
6 house more than 12 minors that is used for the detention  
7 or confinement of a person who is eligible to receive  
8 assistance from the ombudsperson.

9 (4) Enter and inspect without notice any juvenile  
10 home or camp, the Youth Authority, or any private  
11 facility licensed to house more than 12 minors used for the  
12 detention or confinement of a person who is eligible to  
13 receive assistance from the ombudsperson.

14 (5) Subpoena any person to appear, to give sworn  
15 testimony, or to produce documentary or other evidence  
16 that is reasonably material to an inquiry authorized  
17 pursuant to this section.

18 (6) Undertake, participate in, or cooperate with  
19 persons and agencies in conferences, inquiries, meetings,  
20 or studies that may lead to improvements in the  
21 functioning of the juvenile homes and camps, facilities  
22 operated by the Department of the Youth Authority, and  
23 private facilities licensed to house more than 12 minors  
24 that are used for the detention or confinement of a person  
25 who is eligible to receive assistance from the  
26 ombudsperson.

27 (7) Establish and administer a budget for the office.

28 (d) Notwithstanding any other provision of state law,  
29 to the extent consistent with federal law, the  
30 ombudsperson shall have access to any record of a state  
31 or local agency that is necessary to carry out his or her  
32 responsibilities, and may meet or communicate with any  
33 person who is detained or confined in a juvenile home or  
34 camp, a facility operated by the Department of the Youth  
35 Authority, or private facility licensed to house more than  
36 12 minors if that person is eligible to receive assistance  
37 from the ombudsperson.

38 (e) The ombudsperson shall treat confidentially all  
39 matters and the identities of the complainants and



1 witnesses. The ombudsperson shall not levy any fees for  
2 the submission or investigation of complaints.

3 (f) In his or her efforts to resolve complaints made  
4 pursuant to this section, the ombudsperson may do any of  
5 the following:

6 (1) Conduct any investigation he or she deems  
7 necessary.

8 (2) Attempt to resolve complaints informally.

9 (3) Submit a written plan to the relevant state or  
10 county agency recommending a course of action to  
11 resolve the complaint. If the ombudsperson makes a  
12 written recommendation, the state or county agency  
13 shall submit a written response to the ombudsperson  
14 within 30 business days.

15 (g) A toll-free telephone number shall be established  
16 for the office. The toll-free telephone number shall be  
17 posted next to each telephone that is located in a juvenile  
18 home or camp, a facility operated by the Department of  
19 the Youth Authority, or a private facility licensed to house  
20 more than 12 minors, and that is authorized for use by  
21 persons who are eligible to receive assistance from the  
22 ombudsperson.

23 (h) After investigation of any action, the  
24 ombudsperson shall state the recommendations and  
25 reasons if, in the ombudsperson's opinion, the  
26 Department of Corrections, or a county probation  
27 department should:

28 (1) Consider the matter further.

29 (2) Modify or cancel any action.

30 (3) Alter a rule, practice, or ruling.

31 (4) Take any other action.

32 Upon request of the ombudsperson, the Department of  
33 Corrections or a county probation department shall,  
34 within the time period specified by the ombudsperson,  
35 inform the ombudsperson about the action taken on the  
36 recommendations or the reasons for not complying with  
37 them. The ombudsperson may issue a report concerning  
38 the compliance or noncompliance of the department or  
39 the county probation department with his or her  
40 recommendations.



1 The ombudsperson may request the Legislature to take  
2 any necessary legislative action reasonably related to the  
3 performance of his or her duties.

4 (i) The ombudsperson and the staff of the office shall  
5 have the same immunity from civil and criminal liability  
6 as a judge of this state.

7 (j) If any person willfully obstructs or hinders the  
8 ombudsperson in the proper and lawful exercise of his or  
9 her duties, or willfully misleads or attempts to mislead the  
10 ombudsperson in his or her inquiries or investigation, the  
11 court, on application of the ombudsperson, shall issue an  
12 order mandating compliance with a request made by the  
13 ombudsperson that is necessary and proper to carry out  
14 his or her duties.

15 (k) No person who files a complaint with the  
16 ombudsperson shall be subject to any penalties, sanctions  
17 or restrictions because of that complaint.

18 (l) A letter to the ombudsperson from a person who is  
19 eligible for services provided by the ombudsperson who  
20 is detained or confined shall be forwarded immediately,  
21 unopened to the ombudsperson. A letter from the  
22 ombudsperson to a person who is eligible to receive  
23 assistance from the ombudsperson shall be immediately  
24 delivered, unopened, to the person.

25 SEC. 2. Notwithstanding Section 17610 of the  
26 Government Code, if the Commission on State Mandates  
27 determines that this act contains costs mandated by the  
28 state, reimbursement to local agencies and school  
29 districts for those costs shall be made pursuant to Part 7  
30 (commencing with Section 17500) of Division 4 of Title  
31 2 of the Government Code. If the statewide cost of the  
32 claim for reimbursement does not exceed one million  
33 dollars (\$1,000,000), reimbursement shall be made from  
34 the State Mandates Claims Fund.

35 ~~amended to read:~~

36 ~~1170. (a) (1) The Legislature finds and declares that~~  
37 ~~the purpose of imprisonment for crime is punishment.~~  
38 ~~This purpose is best served by terms proportionate to the~~  
39 ~~seriousness of the offense with provision for uniformity in~~  
40 ~~the sentences of offenders committing the same offense~~

~~1 under similar circumstances. The Legislature further  
2 finds and declares that the elimination of disparity and  
3 the provision of uniformity of sentences can best be  
4 achieved by determinate sentences fixed by statute in  
5 proportion to the seriousness of the offense as determined  
6 by the Legislature to be imposed by the court with  
7 specified discretion.~~

~~8 (2) Paragraph (1) shall not be construed to preclude  
9 programs, including educational, vocational, and drug  
10 treatment programs, that are designed to rehabilitate  
11 nonviolent, first-time felony offenders, and to reduce the  
12 rate of recidivism. The Legislature encourages the  
13 development of policies and programs designed to  
14 educate and rehabilitate nonviolent, first-time felony  
15 offenders consistent with the purpose of imprisonment,  
16 and the intent to reduce the rate of recidivism.~~

~~17 (3) In any case in which the punishment prescribed by  
18 statute for a person convicted of a public offense is a term  
19 of imprisonment in the state prison of any specification of  
20 three time periods, the court shall sentence the  
21 defendant to one of the terms of imprisonment specified  
22 unless the convicted person is given any other disposition  
23 provided by law, including a fine, jail, probation, or the  
24 suspension of imposition or execution of sentence or is  
25 sentenced pursuant to subdivision (b) of Section 1168  
26 because he or she had committed his or her crime prior  
27 to July 1, 1977. In sentencing the convicted person, the  
28 court shall apply the sentencing rules of the Judicial  
29 Council. The court, unless it determines that there are  
30 circumstances in mitigation of the punishment  
31 prescribed, shall also impose any other term that it is  
32 required by law to impose as an additional term. Nothing  
33 in this article shall affect any provision of law that imposes  
34 the death penalty, that authorizes or restricts the  
35 granting of probation or suspending the execution or  
36 imposition of sentence, or expressly provides for  
37 imprisonment in the state prison for life. In any case in  
38 which the amount of preimprisonment credit under  
39 Section 2900.5 or any other provision of law is equal to or  
40 exceeds any sentence imposed pursuant to this chapter,~~

1 the entire sentence shall be deemed to have been served  
2 and the defendant shall not be actually delivered to the  
3 custody of the Director of Corrections. The court shall  
4 advise the defendant that he or she shall serve a period  
5 of parole and order the defendant to report to the parole  
6 office closest to the defendant's last legal residence, unless  
7 the in-custody credits equal the total sentence, including  
8 both confinement time and the period of parole. The  
9 sentence shall be deemed a separate prior prison term  
10 under Section 667.5, and a copy of the judgment and other  
11 necessary documentation shall be forwarded to the  
12 Director of Corrections.

13 (b) When a judgment of imprisonment is to be  
14 imposed and the statute specifies three possible terms,  
15 the court shall order imposition of the middle term, unless  
16 there are circumstances in aggravation or mitigation of  
17 the crime. At least four days prior to the time set for  
18 imposition of judgment, either party or the victim, or the  
19 family of the victim if the victim is deceased, may submit  
20 a statement in aggravation or mitigation to dispute facts  
21 in the record or the probation officer's report, or to  
22 present additional facts. In determining whether there  
23 are circumstances that justify imposition of the upper or  
24 lower term, the court may consider the record in the case,  
25 the probation officer's report, other reports including  
26 reports received pursuant to Section 1203.03 and  
27 statements in aggravation or mitigation submitted by the  
28 prosecution, the defendant, or the victim, or the family of  
29 the victim if the victim is deceased, and any further  
30 evidence introduced at the sentencing hearing. The  
31 court shall set forth on the record the facts and reasons for  
32 imposing the upper or lower term. The court may not  
33 impose an upper term by using the fact of any  
34 enhancement upon which sentence is imposed under any  
35 provision of law. A term of imprisonment shall not be  
36 specified if imposition of sentence is suspended.

37 (c) The court shall state the reasons for its sentence  
38 choice on the record at the time of sentencing. The court  
39 shall also inform the defendant that as part of the

1 sentence after expiration of the term he or she may be on  
2 parole for a period as provided in Section 3000.

3 (d) When a defendant subject to this section or  
4 subdivision (b) of Section 1168 has been sentenced to be  
5 imprisoned in the state prison and has been committed to  
6 the custody of the Director of Corrections, the court may,  
7 within 120 days of the date of commitment on its own  
8 motion, or at any time upon the recommendation of the  
9 Director of Corrections or the Board of Prison Terms,  
10 recall the sentence and commitment previously ordered  
11 and resentence the defendant in the same manner as if  
12 he or she had not previously been sentenced, provided  
13 the new sentence, if any, is no greater than the initial  
14 sentence. The resentence under this subdivision shall  
15 apply the sentencing rules of the Judicial Council so as to  
16 eliminate disparity of sentences and to promote  
17 uniformity of sentencing. Credit shall be given for time  
18 served.

19 (e) (1) Notwithstanding any other law and consistent  
20 with paragraph (1) of subdivision (a), if the Director of  
21 Corrections or the Board of Prison Terms or both  
22 determine that a prisoner satisfies the criteria set forth in  
23 paragraph (2), the director or the board may recommend  
24 to the court that the prisoner's sentence be recalled.

25 (2) The court shall have the discretion to resentence  
26 or recall if the court finds both of the following:

27 (A) The prisoner is terminally ill with an incurable  
28 condition caused by an illness or disease that would  
29 produce death within six months, as determined by a  
30 physician employed by the department.

31 (B) The conditions under which the prisoner would be  
32 released or receive treatment do not pose a threat to  
33 public safety.

34 The Board of Prison Terms shall make findings  
35 pursuant to this subdivision before making a  
36 recommendation for resentence or recall to the court.  
37 This subdivision does not apply to a prisoner sentenced to  
38 death or a term of life without the possibility of parole.

39 (3) Within 10 days of receipt of a positive  
40 recommendation by the director or the board, the court

1 ~~shall hold a hearing to consider whether the prisoner's~~  
2 ~~sentence should be recalled.~~

3 ~~(4) The prisoner or his or her family member or~~  
4 ~~designee may request consideration for recall and~~  
5 ~~resentencing by contacting the chief medical officer at~~  
6 ~~the prison or the Director of Corrections. Upon receipt of~~  
7 ~~the request, if the director determines that the prisoner~~  
8 ~~satisfies the criteria set forth in paragraph (2), the~~  
9 ~~director or board may recommend to the court that the~~  
10 ~~prisoner's sentence be recalled. The director shall submit~~  
11 ~~a recommendation for release within 30 days in the case~~  
12 ~~of inmates sentenced to determinate terms and, in the~~  
13 ~~case of inmates sentenced to indeterminate terms, the~~  
14 ~~director may make a recommendation to the Board of~~  
15 ~~Prison Terms with respect to the inmates who have~~  
16 ~~applied under this section. The board shall consider this~~  
17 ~~information and make an independent judgment~~  
18 ~~pursuant to paragraph (2) and make findings related~~  
19 ~~thereto before rejecting the request or making a~~  
20 ~~recommendation to the court. This action shall be taken~~  
21 ~~at the next lawfully noticed board meeting.~~

22 ~~(5) Any recommendation for recall submitted to the~~  
23 ~~court by the Director of Corrections or the Board of~~  
24 ~~Prison Terms shall include one or more medical~~  
25 ~~evaluations, a postrelease plan, and findings pursuant to~~  
26 ~~paragraph (2).~~

27 ~~(6) If possible, the matter shall be heard before the~~  
28 ~~same judge of the court who sentenced the prisoner.~~

29 ~~(f) Any sentence imposed under this article shall be~~  
30 ~~subject to the provisions of Sections 3000 and 3057 and any~~  
31 ~~other applicable provisions of law.~~

32 ~~(g) A sentence to state prison for a determinate term~~  
33 ~~for which only one term is specified, is a sentence to state~~  
34 ~~prison under this section.~~

35 ~~SEC. 2. Section 2808.3 is added to the Penal Code, to~~  
36 ~~read:~~

37 ~~2808.3. The Department of Finance, in consultation~~  
38 ~~with the Prison Industry Authority (PIA) and the~~  
39 ~~Legislative Analyst's Office, shall develop a display in the~~  
40 ~~annual Governor's Budget, consistent with its existing~~

1 ~~commercial accounting and budgeting system, of~~  
2 ~~expenditures and revenues for the PIA, the Prison~~  
3 ~~Industry Board, and the Prison Industries Revolving~~  
4 ~~Fund.~~

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